Date: February 6, 2006

To: NEPA Draft Report Comments
c/o NEPA Task Force
nepataskforce@mail.house.gov

From: Sandy Shaffer
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To Whom it May Concern:

I would like to offer some comments on the *Initial Findings and Draft Recommendations* put forth in your report dated December 21, 2005. I am making these comments as a private citizen and a forest landowner who abuts BLM land, and therefore works very closely with BLM staff toward healthier and more fire resilient forests in my area.

My 5th field watershed is mainly high fire hazard, Fire Regime 1, Condition Class 3. Our WUI encompasses the majority of BLM's land in the valley. Most of the National Forests in my area are uplands and wilderness. We have had several large wildfires in the past 5 years; we wrote and are actively implementing a community wildfire protection plan. My comments are based upon the experience of over five years of having environmental groups litigate, appeal and protest virtually every BLM project put forward that contained a commercial component. If they don't win in court they harass timber companies to the point that no bids are submitted when the project is put up for sale. Nearly all of BLM's lands here are O & C lands, but no timber is being cut to reimburse the Counties. We seem to be in a stalemate.

Following, I present general comments, specific comments on proposed Recommendations, and in italics are some new ideas or thoughts for the Task Force to consider.

General Comments:

In my opinion, there are four major NEPA problems: the ease of litigation and subsequent delays, agency and partner coordination, cost accounting, and how terms like public participation, collaboration, cumulative impacts, stakeholder, and local interest are perceived to be defined. I would rank these 1,2,3,4 as listed.

In general, I don't see the length of time that it takes to write a NEPA document as the issue, but more the delays associated with project appeals and litigation. I feel that the "stall tactic" is alive and well, unfortunately. Even with a favorable court outcome, delays of a year or so in litigation take their toll in costs to staff time, thereby affecting other projects and work. I have experienced this annually in my

BLM District, with staff being so tied up in reports for litigated cases that they cannot work on anything else. This does not even address the losses or costs realized from delaying treatments: implementation cost increases, time needed to cancel or re-write or even re-buy contracts, loss of value of products, other related lawsuits for such things as breach of contract, and possible losses from wildfire or other natural disasters due to the lack of timely action.

Except for salvage projects, litigation delays don't usually have a major effect on the project's outcome, but we are all well aware of how salvage projects need to be moved forward in a much more timely manner.

I'm a firm believer in partnering, collaboration and the like. I spend much of my time voluntarily working toward better collaboration on land management at the local, regional and national levels. I think that moving toward more emphasis from local stakeholders, and tightening restrictions on how national groups can comment will help increase public participation, as well as provide better-designed projects. I do understand that collaborating and adding partners to a project adds time to the process. But, it's worthwhile in the long run, and the federal agencies need to recognize this and account for it.

While I understand that Washington DC has the task of "making ends meet," I am a firm believer in the phrase that "one size does not fit all" when it comes to managing our federal lands across the country. Aside from regional economics, other factors such as unique ecosystems, state or federal laws regarding waterways and protected species, and climate variables all play into the cost to manage lands. Whatever comes out of this NEPA revision cannot be based upon costs, as that would completely eliminate what is best for the land. We all need to keep in mind the primary purposes of the DOI & the DOA.

Regarding definition, collaboration is a perfect example. Some feel it's sitting down and discussing issues, objectives and possible solutions together. Others feel that holding a public meeting to present a map of the proposed project's parameters qualifies, while still other groups feel agencies only collaborate if they agree with the particular group's demands. Therefore terms need to be better defined so that everyone has the same expectations from the NEPA process. I believe this would help in litigation, as well.

Comments on Recommendations:

Group 1: Addressing Delays in the Process

Recommendation 1.1: While I feel the term "major federal action" does need to be better defined, I think it should be dependent upon the amount of impact, not the amount of planning required or treatment cost. The proposed change in definition is very subjective and not based upon on-the-ground actions. Would "new" mean to a region, district or state or the nation? As well, land management planners would

need to go through archives of old project cases to determine which level of analysis their proposed project requires = more time and cost = defeats the purpose.

Recommendation 1.2: I don't think a time limit is reasonable, unless several other changes in the NEPA process are made as well. Several other Recommendations (2.1, 3.1, 4.2, and 6.1) are suggesting more consultation and inclusion of other partners or stakeholders, and this will only add time to the NEPA document process.

Also, presently, a project can enter the project development stage working under a set of standards say, for example, riparian work. Two thirds of the way through the development of the document, a court case could get settled, or an opinion made by another agency that could possibly affect the science used to assess riparian areas in this project, and so the team has to start over with their analysis. This happens very often, so that teams are constantly stopping and re-starting the analysis process.

I would suggest looking at a process whereby a starting set of conditions are declared, and the project is developed under those conditions and does not have to bounce back and forth if a new opinion is made or a lawsuit settled. "We are using this evidence and ruling on survey and manage to assess this new project, period." Science is constantly changing, but by requiring updates in NEPA documents whenever a change is documented, much time and energy and resources are being duplicated, wasted.

Recommendation 1.3 & 1.4: Very good ideas.

Group 2: Enhancing Public Participation
Recommendation 2.1: I definitely think more weight should be given to local stakeholders than to organized groups who send in computerized comments. However, there are many problems with implementing this concept.

Local stakeholder input needs to be in the early, pre-NEPA stages of project development, particularly with adjacent landowners who might have knowledge, ideas and or concerns about proposed actions. This seems to be happening more often, at least in our area, given the National Fire Plan, HFRA and HFI programs that require collaboration with local stakeholders. But, how do you weigh comments from a new landowner who does not know much about forest health against someone who's lived on the land all their 70-odd years and is unaware of recent Acts that need to be satisfied by federal agencies, against someone two towns over who recreates in the area and is a retired forester who comprehends the many challenges of land management? Do you ask for a background check with submitted comments?

But, within the NEPA process, does an adjacent landowner's $0.39 stamp count more than that from a regional environmental group? Maybe it should. How do you know whether a national group member does actually spend several weeks a summer camping in the affected project area? By weighting comments from local stakeholders, are the forests still belonging to everyone?

As far as disagreeing with a NEPA document's decision, local stakeholders many times do not have the means to appeal or litigate if they are so inclined, while a national group does. Will the federal government even the score by paying so that an individual has the ability to sue? *How about disallowing a national organization's suit if a half-dozen or so adjacent private landowners think the case is invalid?*

I guess I feel that although this is a great concept, it will not be implementable within the NEPA process, and I do not feel it will help solve the problems of delay and litigation that are the main obstacles for NEPA, in my mind. But it could increase public participation.

Recommendation 2.2: I don't feel that this is a realistic idea to promote, unless several other major changes in the whole process happen as well. Right now, shortening the page limit is not going to help the situation, since EAs and EISs are basically written to stand up in court (and, they do!). Our local NEPA documents are already being reduced to the preferred lengths; however this requires numerous appendices that accompany the analysis document to provide all of the back-up information needed for support. I personally find these harder to read, having to compare several inch-thick sections to really find out what is being proposed. I also have found more inconsistencies between the various disciplines when types of information are separated into different appendices; the editing doesn't happen adequately, and things get buried within the pages that don't make sense or meet the project's objectives.

So, as a way to enhance public participation, no, shortening the documents <u>does not</u> help in itself. I find that most folks are interested in knowing what is being proposed and what the forest/land will look like afterwards. However, they cannot understand the lengthy analysis by each discipline on significant affects and cumulative impacts, so they don't bother to read the NEPA documents.

I do think it's very possible to provide a layperson's summary of conditions, proposed actions and results at the beginning of a NEPA document or as an easily accessible separate document, that would invite more participation by local stakeholders, because this summary was, in fact, written for the public.

Group 3: Better Involvement for State, Local and Tribal Stakeholders
I must begin by saying that I do not have experience with Tribal situations and land management, so all comments below are directed toward state and local political stakeholder involvement.

Recommendation 3.1: My experience with NEPA is primarily for land management issues such as forest thinning, timber harvest, road building, cattle grazing and such. While I understand that in some instances, a State regulation might come into play with a federal proposed action, I feel that <u>no one</u> but a federal agency should be writing NEPA documents for federal lands. From my conversations with DOI/DOA

employees over the years, adding more partners adds more time to a process, so if a state or local government wishes to be a partnering agency in a project, fine, as long as their participation does not, in any way, slow down or delay the federal agency's NEPA process.

I do not feel that the term "political subdivision" should be utilized, but rather levels of state or local governments would be more appropriate. An association of counties, for example, should not be allowed to have "cooperating agency" status, since they are not any part of an elected form of government, and have no jurisdiction by law.

I must confess to not completely understanding the full implications of being a "cooperating agency" beyond the CEP's regulation specifying that an agency or government may qualify as such because of "...jurisdiction by law or special expertise." Jurisdictional law is one thing, and federal agencies should certainly be made aware of such issues. I would be very concerned, however, with the use of "special expertise" being applied to a federal land management project. As an example, a local county commissioner's "special expertise" on timber harvesting could stem from actual on-the-ground experience, influence from the local timber industry, or a lagging county budget. It may or may not include any scientific knowledge of the actual lands and forest conditions being proposed for treatment. The same could be said of a state-level official.

In summary, I feel this area of discussion needs to stay governmental, not political. I feel that state or local political levels have the right to comment on proposed actions as they relate to jurisdictional laws or regulations; however, within the NEPA process, a state or local entity should not be able to carry more weight than a knowledgeable local resident, especially when it comes down to yea or nay.

Recommendation 3.2: If this item is targeted at action on federal lands, I totally disagree with this Recommendation. This Recommendation will not help solve NEPA problems. Adding another player will complicate things, slow them down, make cases less defendable, and waste time and resources.

States do not have the knowledge, staff, resources or ability to conduct a thorough NEPA review that includes involving local stakeholders, while federal agencies that are located in the affected areas do this all the time. Moving a federal task to a state function allows political influence, less local knowledge and the possibility of non-compliance with other federal laws. I can easily envision a state "environmental review" on a proposed action having to be supplemented by the federal ID team at the last minute, to complete the required analysis. Lost time, duplication of efforts. Nothing gained, time and money lost.

Group 4: Addressing Litigation Issues

Recommendation 4.1: This idea has merit and possibility. However, the "citizen suit provision" must be able to be utilized against national organizations and non-profits as well. The first bullet regarding best available information and science is good, but

seems like it could be hard to enforce. Nowadays it seems that even scientists within a department at one university can't agree upon what good science is. I also support the concept of establishing clear guidelines on who is directly impacted by a proposed action.

Time periods to file a challenge to a decision are very important, and could greatly assist in cleaning up NEPA to make it more effective. The proposed 180 days seems lengthy, especially concerning something like a timber or salvage sale. Given that some areas cannot perform tasks such as road building or timber harvesting during certain months of the year, a project may be sold within a month of the decision to beat the calendar. The buyer could actually begin work, only to be shut down with a pending lawsuit. These instances cost the federal agency money to pay off the sale, as well as lost revenue and the possibility of more lawsuits from the timber company. A mess, but I'm not sure how to get around it. Any time limitation is better than none, however.

Recommendation 4.2: Unless this proposed "pre-clearing" were completed prior to the actual start of the NEPA process, it would add time to the overall project timeline, which goes against Recommendation 1.2.

I do like the idea of someone besides the federal land management agencies monitoring court decisions and such, as this seems to be a huge problem in the Pacific Northwest. *As I mentioned in my 1.2 discussion on page 2, is there a way that a given project could be legally cleared to work under a "current" set of legal conditions, without having to update or start over if some new decision is made?*

Group 5: Clarifying Alternatives Analysis
Recommendation 5.1: This requirement would end up costing the agencies more money and time to complete the proposed studies prior to writing the project analysis document, which conflicts with the goals of decreasing both the length of the document and the length of time for the process. I do not feel that requiring more alternatives adds significantly to the time or cost of an EA/EIS. I feel it broadens the approach that a land manager takes to the proposed project, which is only good for the land.

I also do not think that proposed actions should be considered only if they are economical. This could very often preclude actions that are environmentally correct for a given area. As an example, hazardous fuels thinning in the Wildland Urban Interface are more costly than those done in a more remote area with the same vegetation loads. Do we stop treating the WUI? Or, what about regions that have physical characteristics such as poor, rocky soils that might require helicopter logging to reduce soil erosion into nearby, protected Coho salmon streams. More expensive, so do we stop logging completely or degrade a protected species habitat? How do you decide?

Perhaps WUIs need a COLA or "COTA" (cost of treatment adjustment)?

Recommendation 5.2: This is a good suggestion, but it was my understanding that this is a standard requirement already? Or, are my local federal land managers ahead of the curve?

Recommendation 5.3: Yes!!!

Group 6: Better Federal Agency Coordination
Recommendations 6.1 & 6.2: These should be the standard. Again, adding consultation adds time and therefore money to the process. However, I do think that better coordination between agencies and partners can ultimately strengthen the product and shorten the process.

Group 7: Additional Authority for the CEQ

Recommendation 7.1: This idea is interesting, but I have a few concerns. What qualifications would this "ombudsman" have? Would he/she have a background in forestry, geology, and biology, or would it be in law and sociology? Many problems in the courts are due to the fact that judges do not have adequate knowledge about natural resources and such. With decision-making authority, this position could not be a political appointee. One question on the actual decisions to be made – this would not include which alternative to implement?

As an aside, can more progress be made to improve the environmental and scientific knowledge of judges hearing NEPA cases?

Recommendation 7.2: Until some of the other issues are resolved, such as defining cumulative effects, requirements for partnering, length of documents, who can challenge a decision, etc. – I don't feel that this is appropriate at this time. The goal still has to be making the right decision for the land, not the cost.

Group 8: Clarify meaning of "cumulative impacts"
Recommendation 8.1: I am confused by this proposal, specifically by the idea that the assessment of existing environmental conditions will serve as the methodology to account for past actions. I would just comment that existing conditions of untreated land should not be accepted as historical or normal conditions. In my experience, it seems as though ID teams are moving in that direction.

Recommendation 8.2: While I agree that NEPA analyses should not have to account for "worst-case scenario," I think it becomes very subjective to not use the term "reasonably foreseeable" when looking at cumulative impacts. Research data could be implemented, depending upon who determines what is "reasonably foreseeable."

For example, if a region managed by BLM is predominantly O & C lands that should be providing timber, and if said lands have not had timber extracted in a century, then it is "reasonably foreseeable" that said lands will be logged by BLM in the near future

(unless restrictions apply due to riparian or critical habitat situations), because BLM does have an annual ASQ to meet. As well, I do not feel that federal budgets should be an excuse to disallow an action to be "reasonably foreseen" (even though I think that the ups and downs and un-timeliness of the federal budget process is one of the biggest issues in achieving effective land management today).

Group 9: Studies
I approve whole-heartedly that these Study Recommendations are aggressive in their timeliness, requiring the reports within one year. Don't change this!

I believe Recommendations 9.1 & 9.2 are good ones.

I do not see the value of Recommendation 9.3, as I don't feel there is overlap or duplication at all.

In closing, I would like to thank you for the opportunity to comment at this juncture in your review process.

I would like to officially request that I receive updates and information on this NEPA Review project at each succeeding stage. Please mail written materials to me at the address below.

Sincerely,

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